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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN GORMAN, an individual;

Plaintiff;

v.

WOLPOFF & ABRAMSON, L.L.P.;  
MBNA AMERICA BANK, N.A., and  
DOES 1 through 100, inclusive;

Defendants.

Case No. C-04-4507 JW

FIRST AMENDED COMPLAINT FOR  
LIBEL; BREACH OF WRITTEN  
CONTRACT; VIOLATION OF CAL.  
CIV. CODE § 1785.25;  
VIOLATION OF 15 U.S.C. §  
1681n; VIOLATION OF 15  
U.S.C. § 1681o; VIOLATION OF  
FAIR DEBT COLLECTION  
PRACTICES ACT

Plaintiff John Gorman ("Gorman") hereby alleges as follows:

1. Plaintiff Gorman is an individual residing in the County of Santa Clara, State of California and is an attorney licensed by the State of California.

2. On information and belief, defendant Wolpoff & Abramson, L.L.P. ("Wolpoff") is a limited liability partnership doing business in the State of California. On further information and belief, Wolpoff's legal practice includes the regular handling of debt collection cases throughout the State of California, including in the County of Santa Clara, State of California.

3. On information and belief, MBNA America Bank, N.A.

1 ("MBNA") is a corporation that issues credit cards on a nationwide  
2 basis, including to individuals residing in the County of Santa  
3 Clara, State of California.

4 4. Plaintiff is the former holder of an MBNA Visa credit  
5 card.

6 5. The true names and capacities, whether individual,  
7 corporate, associate or other, of the defendants sued herein as  
8 Does 1 through 100, inclusive, are unknown to plaintiff, who sues  
9 said defendants by such fictitious names pursuant to Code of Civil  
10 Procedure Section 474. When the true names and capacities of such  
11 defendants are ascertained, plaintiff shall amend this complaint to  
12 insert the same. Plaintiff is informed and believes, and based  
13 thereon alleges, that each such fictitiously named defendant herein  
14 is responsible for each of the acts and omissions alleged herein.

15 6. On information and belief, at all times mentioned herein,  
16 the defendants, and each of them, were acting on their own behalf  
17 and as the agents, servants, partners, joint venturers, and  
18 employees of each other, and within the scope of their agency,  
19 authority and employment.

20 7. In or about 2003, a dispute arose between plaintiff and  
21 defendants MBNA and Does 1 through 5 and 50 through 75 regarding  
22 certain charges posted by MBNA to plaintiff's credit card account.

23 8. Plaintiff timely notified defendants MBNA and Does 1  
24 through 5 and 50 through 75 in writing that the credit card charges  
25 in question were not legitimate and were disputed. Said defendants  
26 temporarily removed the disputed charges from plaintiff's account  
27 but eventually re-posted the disputed charges. Said defendants  
28 thereafter wrongfully refused to remove the disputed charges

1 despite multiple requests from plaintiff.

2 9. MBNA and Does 1 through 5 and 50 through 75 subsequently  
3 retained Wolpoff to initiate legal action against plaintiff.

4 10. During 2003 and continuing through late February 2004,  
5 the defendants placed multiple telephone calls to plaintiff at his  
6 residence and his office and made threatening and harassing phone  
7 calls regarding the alleged debt, despite being requested by  
8 plaintiff both orally and in writing to cease and desist making  
9 such telephone communications.

10 11. Defendants MBNA and Does 1 through 5 and 50 through 75  
11 have falsely reported to various credit reporting agencies that  
12 plaintiff is delinquent on obligations allegedly owed to MBNA.  
13 Such defendants have further willfully failed to note that the  
14 alleged debt is disputed by plaintiff.

15 12. Plaintiff discovered that defendants MBNA and Does 1  
16 through 5 and 50 through 75 were providing inaccurate and  
17 incomplete information about him in spring 2004. Plaintiff  
18 thereupon requested in writing that such defendants correct the  
19 defamatory information and also notified the various credit  
20 reporting bureaus that the information provided by MBNA was  
21 disputed, mistaken, and that it should be corrected. On  
22 information and belief, MBNA and Does 1 through 5 and 50 through 75  
23 notified by the various credit reporting agencies of the existence  
24 of plaintiff's dispute and thereafter failed to conduct an  
25 incomplete and insufficient investigation. These defendants have  
26 further failed to take any corrective action and continue to report  
27 the debt as delinquent and without indicating that the charges are  
28 disputed by plaintiff.

FIRST CAUSE OF ACTION

(Libel)

13. Plaintiff repeats and realleges paragraphs 1 through 12.

14. The conduct of defendants MBNA and Does 1 through 5 and 50 through 75 constitutes libel that tends to defame, disparage, and injure plaintiff in his business and reputation and has also caused pain and suffering.

15. As a result of said defendants' acts and omissions, plaintiff has been injured in an amount yet to be ascertained but believed to exceed the sum of \$210,000.00.

16. The conduct of these defendants as alleged herein was willful, fraudulent, malicious, and oppressive. As a result, plaintiff requests an award of punitive damages in the sum of at least \$300,000.00.

SECOND CAUSE OF ACTION

(Violation of Cal. Civ. Code § 1785.25)

17. Plaintiff repeats and realleges paragraphs 1 through 16.

18. Cal. Civ. Code prohibits any person from furnishing to a credit reporting bureau information that such person knows or should know is incomplete or inaccurate.

19. Defendants MBNA and Does 1 through 5 and 50 through 75 have willfully and intentionally violated Cal. Civ. Code § 1785.25 by providing incomplete and inaccurate information concerning plaintiff to various consumer credit reporting agencies.

20. Plaintiff is entitled to relief for said defendants' misconduct under Cal. Civ. Code § 1785.31, including actual damages, court costs, loss of wages, attorneys' fees, pain and suffering, punitive damages, and injunctive relief.

1        21. As a direct result of said defendants' breach, plaintiff  
2 has been injured in his business and reputation. Plaintiff's  
3 damages are not yet ascertained but are believed to exceed the sum  
4 of \$200,000.00.

5        22. Plaintiff has also suffered pain and suffering in the  
6 amount of \$150,000.00.

7        23. Plaintiff is also entitled to an award of statutory  
8 punitive damages in the amount of \$5,000.00 for each violation  
9 committed by defendants MBNA and Does 1 through 5 and 50 through  
10 75.

11                    THIRD CAUSE OF ACTION

12                    (Violation of 15 U.S.C. § 1681n)

13        24. Plaintiff repeats and realleges paragraphs 1 through 23.

14        25. Defendants MBNA and Does 1 through 5 and 50 through 75  
15 are furnishers of credit information subject to the federal Fair  
16 Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq.

17        26. The FCRA requires that each of these defendants  
18 accurately report credit information about consumers to credit  
19 reporting agencies, report the existence of any dispute about any  
20 allegedly delinquent charges, and promptly verify and correct any  
21 contested information provided by them to a credit reporting  
22 bureau.

23        27. Said defendants have willfully failed to comply with the  
24 requirements of the FRCA with regard to the furnishing of  
25 information about plaintiff in violation of 15 U.S.C. § 1681n.

26        28. Plaintiff is entitled to recover actual damages of  
27 \$1,000; punitive damages, costs of suit, and reasonable attorneys'  
28 fees.



1 calls placed by the defendants were made at various times of day,  
2 including but not limited to early mornings and late in the  
3 evening. Such calls continued to be made despite the prior oral  
4 and written requests made by plaintiff directing that the  
5 defendants communicate with him only in writing and not by  
6 telephone.

7 36. Plaintiff is entitled to recover his actual damages, a  
8 penalty of up to \$1,000.00, and reasonable attorneys' fees and  
9 costs.

10 PRAYER FOR RELIEF

11 Wherefore, plaintiff prays for judgment against the defendants  
12 as follows:

- 13 1. Damages according to proof and as authorized by law;
- 14 2. Punitive damages and statutory penalties;
- 15 3. Costs and attorneys' fees as permitted by law;
- 16 4. Interest;
- 17 5. Injunctive relief; and
- 18 6. Such other relief as may be just and proper.

19  
20 GORMAN & MILLER, P.C.

21 By \_\_\_\_\_/s/\_\_\_\_\_  
22 CRAIG A. HANSEN  
23 Attorneys for Plaintiff  
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